

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMIGA, INC., a Delaware corporation,

Plaintiff,

vs.

HYPERION VOF, a Belgium corporation.

Defendant.

CAUSE NO.: CV07-0631-RSM

**DECLARATION OF BARRIE JON
MOSS IN SUPPORT OF PLAINTIFF
AMIGA, INC.'S REPLY TO
HYPERION'S OBJECTION TO AND
MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION FOR
EXPEDITED DISCOVERY**

**NOTE ON MOTION CALENDAR:
MAY 11, 2007**

COURT: HON. RICARDO MARTINEZ

**MOSS DECLARATION
CASE No. CV07-0631-RSM**

CABLE, LANGENBACH, KINERK & BAUER LLP
1000 SECOND AVENUE BUILDING, SUITE 3500
SEATTLE, WASHINGTON 98104-1048 (206) 292-8800

1 I, Barrie Jon Moss, declare:

2 1. I am the former Chief Technology Officer ("CTO") for Amiga, Inc ("Amiga"). I
3 am currently engaged as a technical consultant to Amiga, namely because Amiga does not have a
4 corporate presence in the United Kingdom, where I reside. I began working for Amiga in 1998
5 when the company was owned by Gateway 2000. I left the company for a brief period in 1999
6 but came back in January 2000. I currently own stock in Amiga.

7 2. I have personal knowledge of the matters stated in this Declaration, and, if called
8 as a witness could competently testify to them.

9 3. In my capacity as CTO for, and on behalf of, Amiga, I, with the help of other
10 senior Amiga employees, negotiated and executed the (OEM) License and Software
11 Development Agreement, dated November 3, 2001 (the "Agreement") at dispute in this case,
12 with Hyperion VOF ("Hyperion") and Eyetech Ltd. ("Eyetech").

13 4. All communications between the parties to the Agreement concerning
14 negotiations over the terms of the Agreement were conducted in English. This includes both oral
15 and written communications.

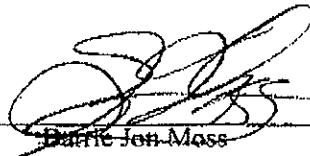
16 5. The Agreement itself was executed in English.

17 6. At the time of negotiations over the Agreement, Ben Hermans was a principal and
18 managing partner of Hyperion. Mr. Hermans was my primary contact with respect to
19 negotiations over the terms of the Agreement, and all communications that I had with him, both
20 written and oral, were in English. The Agreement was entered into by Hyperion by Mr.
Hermans's.

22 7. I am informed and believe that Mr. Hermans left Hyperion to enter a private law
23 practice and has represented Hyperion in responding to Amiga's notices of breach and
24 termination.

1 I declare under penalty of perjury under the laws of the United States that the foregoing is
2 true.

3 DATED: 10 May 2007
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Darrie Jon Moss

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MOSS DECLARATION - 2
CASE No. CV07-0631-RSM

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on May 11, 2007, I electronically filed the foregoing with the Clerk
3 of the Court using the CM/ECF system which will send notification of such filing to the
following:

4 William A. Kinsel
5 Law Offices of William A. Kinsel, PLLC
6 Market Place Tower
7 2025 First Avenue, Suite 440
8 Seattle, WA 98121

9 _____
10 /s/
11 Lawrence R. Cock, WSBA No. 20326
12 Attorney for Plaintiff
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